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Wood, Herron & Evans, LLP (Lantech) 441 Vine Street 2700 Carew Tower Cincinnati, OH 45202			BURGESS, RAMYA PRAKASAM	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK R. LANCASTER III, CURTIS W. MARTIN
and TERRY L. WILSON

Appeal 2009-013750
Application 10/696,736
Technology Center 3600

Before JENNIFER D. BAHR, LINDA E. HORNER, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Patrick R. Lancaster III et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 24-32, 38, 43-54, 62, 65-74, 83, 86, 173-180, 182-187, 189-194, 196-199 and 201. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellants' claimed invention is directed to a method of building a load¹ with product from an in feed area (Spec. 4: para. [009]).

Claim 24, reproduced below, is representative of the subject matter on appeal.

24. A method of building a load with product from an infeed area of a palletizer, the method comprising:

defining a desired area of a load to be filled with product using at least two of a height sensor, a length sensor, and a width sensor;

automatically filling the desired area with product; and
determining when the desired area is filled using at least two of the height sensor, the length sensor, and the width sensor.

THE REJECTIONS

The following rejections by the Examiner are before us for review:

1. Claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86 and 173 are rejected under 35 U.S.C. § 102(b) as being anticipated by Becicka (US 5,098,254, issued Mar. 24, 1992).

¹ Appellants' Specification describes that "moving product to the pallet **112** is referred to as building a load" (Spec. 15: para. [056]) (Bold added).

2. Claims 32, 45, 51-53, 66, 72-74, 174-180, 182-187, 189-194, 196-199 and 201 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Becicka.

ISSUES

The issues before us are: (1) whether the Examiner erred in finding that Becicka describes, and in concluding that Becicka would have rendered obvious, the steps of using the parameters of height, length and width to determine when the desired area is filled or the load is completely built, or to define the desired area to be filled with a product, as called for in independent claims 24, 48, 67, 173, 174, 178, 182, 189, 196 and 201 (App. Br. 24, 28, 31, 32, 37, 42, 46, 48, 51, 55); and (2) whether the Examiner erred in concluding that Becicka would have rendered obvious the steps of moving and depositing a first product having a first size on the load, and a second product having a size different from the first size on the load, as called for in independent claim 176 (App. Br. 40).

ANALYSIS

Rejection of claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86 and 173 under 35 U.S.C. § 102(b) and claims 32, 45, 51-53, 66, 72-74, 174, 175, 178-180, 182-187, 189-194, 196-199 and 201 under 35 U.S.C. § 103(a)

While the Examiner found otherwise (Ans. 3-4) regarding Becicka, we find that Appellants' analysis of Becicka and how it corresponds to the claimed invention to be reasonable and adopt it as our own. In particular, Appellants contend and we agree that in Becicka, (1) the area to be filled

corresponds to the total number of cartons **12** in a full load² which is predetermined operational data that is programmed or entered into the control system³, and (2) while switches and detectors **32, 42, 56, 58, 62**, and **64** in palletizer **10** may assist with filling an area with cartons **12**, they do not define the area to be filled, or determine when that area has been filled. (Reply Br. *passim*, App. Br. *passim*). We agree with Appellants that Becicka describes using preprogramed data corresponding to the total number of cartons **12** in a full load to define the area to be filled or determine when that area has been filled (Reply Br. *passim*, App. Br. *passim*).

Thus, we agree with Appellants that Becicka does not describe the steps of using the parameters of height, length and width to determine when (1) the desired area is filled or (2) the load is completely built as called for in independent claims 24, 48, 67, 173.

Independent claims 174, 178, 182, 189, 196 and 201 call for, *inter alia*, the steps of using the parameters of height, length and width to define the desired area to be filled with a product. However, we conclude that the Examiner's conclusion of obviousness for independent claims 174, 178, 182, 189, 196 and 201 does provide an adequate rationale to remedy the deficiency in Becicka, as noted *supra*, (Ans. 4-5).

We reverse the rejection of claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86 and 173 under 35 U.S.C. § 102 and claims 32, 45, 51-53,

² Appellants' Specification describes "a pallet having a product on it is referred to herein as a load, or a palletized load, shown by reference numeral **124** in FIG. 1" (Spec. 15: para. [056]) (Bold added).

³ Col. 4, ll. 30-36.

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66, 72-74, 174, 175, 178-180, 182-187, 189-194, 196-199 and 201 under 35 U.S.C. § 103.

Rejection of claims 176 and 177 under 35 U.S.C. § 103(a)

We agree with Appellants that Becicka only shows cartons **12** of a single size and is silent as to whether the size of the cartons **12** may vary in a single load (App. Br. 41).

We find that the Examiner's analysis does not address the steps of moving and depositing a first product having a first size on the load, and a second product having a size different from the first size on the load, as called for in independent claim 176.

We conclude that an incomplete rationale does not provide a sound basis for a rejection under 35 U.S.C. § 103(a). *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."); *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) ("The legal conclusion of obviousness must be supported by facts. Where the legal conclusion is not supported by facts it cannot stand.")

We reverse the rejection of independent claim 176 and dependent claim 177.

CONCLUSIONS

The Examiner has erred in finding that Becicka describes, and in concluding that Becicka would have rendered obvious, the steps of using the parameters of height, length and width to determine when the desired area is

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filled or the load is completely built, or to define the desired to be filled with a product, as called for in independent claims 24, 48, 67, 173, 174, 178, 182, 189, 196 and 201.

The Examiner has erred in concluding that Becicka would have rendered obvious the steps of moving and depositing a first product having a first size on the load, and a second product having a size different from the first size on the load, as called for in independent claim 176.

DECISION

The decision of the Examiner to reject claims 24-32, 38, 43-54, 62, 65-74, 83, 86, 173-180, 182-187, 189-194, 196-199 and 201 is reversed.

REVERSED

JRG